

Bureau of Indian Affairs, Interior

§ 103.35

loan in case of default. Mortgages on individually held trust or restricted land shall be subject to foreclosure or sale pursuant to the terms of the mortgage. For the purposes of any foreclosure or sales proceedings, the owner shall be regarded as vested with an unrestricted fee simple title to the land. The United States shall not be a necessary party to the proceedings pursuant to the Act of March 29, 1956 (70 Stat. 62; 25 U.S.C. 483a). Any conveyance of the land pursuant to such proceedings shall divest the United States of title to the land. Trust or restricted land given as security for a loan shall not be sold or title otherwise transferred without giving the Commissioner and the tribe of the reservation on which the land is located, or is adjacent to, written notice, at least 45 days in advance of the date of sale or proposed transfer of title.

(d) Tribes, corporations, cooperative associations, partnerships, and Indian individuals leasing trust or restricted land may, when provided in the lease and approved by the lessor and the Commissioner, mortgage their leasehold interest in the leased premises for the purpose of borrowing capital for the development and improvement of the leased premises.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

§ 103.31 Chattels.

Tribes, organizations and Indian individuals may execute mortgages on nontrust and unrestricted chattels as security without the approval of any federal official. If a lender requires, the Commissioner may approve mortgages of trust or restricted chattels given to secure guaranteed or insured loans. A tribe must adhere to the provisions of its constitution, bylaws, charter, or other organizational documents in mortgaging chattels. Mortgaged chattels shall be subject to foreclosure or sale pursuant to the terms of the mortgage or security agreement in accordance with applicable laws.

§ 103.32 Crop mortgages.

Crops grown on leased trust or restricted land may be mortgaged as security for a loan with the approval of

the lessor and the Commissioner. Individuals owning trust or restricted land may mortgage crops grown on such land as security for a loan with approval of the Commissioner. Crops grown on trust or restricted land after severance from the land and crops grown on nontrust and unrestricted land may be mortgaged as security without the approval of any Federal official.

§ 103.33 Assignments of income.

(a) A tribe or organization may execute assignments of trust income from specific sources as security for loans, pursuant to authorization in its constitution, bylaws, charter, or other organization papers. Tribes may not execute general assignments of trust income as security for loans. Assignments of trust income require approval by the Commissioner before becoming effective.

(b) Assignments of income from the trust or restricted land of an Indian individual may be executed as security for loans with the approval of the Commissioner. However, restricted land of heirs or devisees of members of the Five Civilized Tribes of Oklahoma is subject to the jurisdiction of Oklahoma state courts under the Act of August 4, 1947 (61 Stat. 73).

§ 103.34 Restrictions.

Unless the security for a loan requires approval of a federal official, no restrictions shall be placed by any official upon the security that may be given for a loan. Lenders will document any and all prior security interests of record with respect to proposed collateral. Lenders will use caution in making certain that the security taken is unencumbered. Lenders will follow the same prudent procedures as if the borrower were a non-Indian or a non-Indian organization.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

§ 103.35 Release of security.

The prime security for a loan will not be released unless the property is sold and the net proceeds applied to the